IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3351 of 1999

to

FIRST APPEALNo 3390 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT

Versus

POPAT RAIYA KIKANI

Appearance:

MR PG DESAI, GP for Appellants in FA No. 3351 to 3370 of 1999

MR RC KODEKAR, AGP for Appellants in FA No. 3371 to 3390 of 1999

MR VIMAL M PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE J.R.VORA
Date of decision: 02/11/1999

COMMON ORAL JUDGEMENT : [Per: Kadri, J.]

1. Admit. Learned counsel Mr. Vimal M. Patel, waives service of notice of Admission on behalf of the respondent in each Appeal. By consent of the learned advocates, the Appeals are taken up for hearing.

2. These Appeals are filed by the Appellant under Section 54 of the Land Acquisition act, 1894 (hereinafter referred to as the "Act") read with Section 96 of the Code of Civil Procedure, against the common judgment and award dated November 20, 1998 passed by the Joint District Judge, Junagadh, in Land Reference Cases Nos. 499 of 1988 to 537 of 1988 and Land Reference Cases No. 8 of 1994.

3. A proposal was sent by Executive Engineer, Irrigation Department, Junagadh, on February 22, 1987, to acquire lands of village Sarsai, taluka Visavadar, for the public purpose, namely, "Dhrafad Irrigation Scheme". The said proposal was scrutinised by the State Government and Notification under Section 4(1) of the Act was published in the Official Gazette on June 4, 1987. Errata to Notification came to be published in the Government Gazette on August 27, 1987. The land owners filed their objections under Section 5-A of the Act before the Land Acquisition Officer. The Land Acquisition Officer after affording opportunity of hearing to the land owners, submitted his Report under Sec. 5-A(2) of the Act to the State Government. The said report of the Land Acquisition Officer was scrutinised by the Government, and ultimately, Notification under Section-6 of the Act was published in the Official Gazette on September 17, 1987. The land owners were served with the Notices under Sec. 9(3) & (4) of the Act. In response to the Notices issued under Sec. 9 of the Act, the land owners lodged their claims before the Land Acquisition Officer. The Land Acquisition Officer on the basis of materials produced before him and after considering the situation of the land, made his Award on 30.5.1988 and offered compensation for the acquired lands at Rs. 200 per Are for non-irrigated, Rs. 300 per Are for irrigated and Rs. 1 per Are for Kharaba land.

4. Land owners were of the opinion that the

compensation offered by the Land Acquisition Officer was inadequate and hence they filed written applications under Sec. 18 of the Act, requiring him to refer their applications to the District Court for the determination of the compensation of the acquired lands of village Sarsai. The Land Acquisition Officer referred the applications filed by the owners of the acquired lands to the District court, Junagadh, which came to be numbered as Land Reference Cases Nos. 499 of 1988 to 537 of 1988. Before the Reference Court, the claimants claimed compensation at the rate of Rs. 1700 per Are for their acquired lands. According to the claimants, acquired lands of village Sarsai were very fertile and they used to raise three crops in a year and they were getting net income of Rs.5,000/- to 6000/- per year from one Bigha of land.

5. The appellants filed their common written statement at Exh.7, inter alia, contending that the applications under Sec. 18 of the Act filed by the claimants were time barred. It was averred that the Land Acquisition Officer had taken into consideration the sale deeds, which were executed prior to 5 years of the acquisition. It was claimed that the Land Acquisition Officer had awarded just and reasonable compensation to the claimants for their acquired lands and hence the applications be dismissed with costs.

6. The Reference Court, on the basis of the above pleadings, framed common issues at Exh.8 in Land Reference Cases Nos. 499 of 1988, which was treated as main Land Reference Case.

7. To substantiate their claims before the Reference Court, the claimants examined the following witnesses:

(i) Kurjibhai Hirjibhai Exh. 74
(ii) Vitthalbhai Reyabhai Exh. 75
(iii) Bhikhubhai Popatbhai Exh. 76
(iv) Ukabhai Mohanbhai Exh. 77
(v) Jivrajbhai Ukabhai Exh. 78
(vi) Laxmanbhai Hajabhai Barad Exh. 83
(vii) Jagubhai Bhimbhai Vala Exh. 137.

The claimants produced documentary evidence, such as, certified copy of Village Form No. 7/12 extracts, sale deeds - Exh. 138, etc.

8. Appellants examined the following witnesses:

(i) Keyur Chandrakant Sampat, Dy. Collector

and Land Acquisition Officer, Irrigation Department at Exh.143.

(ii) Shantilal Vashrambhai Rampariya, Exh.153.

9. The Reference Court after appreciating the oral as well as documentary evidence and the arguments advanced by the learned advocates of both the sides, deduced that sale deed Exh. 138 was not relevant and comparable for determining the market value of the acquired lands because it was post notification sale deed. The Reference Court further deduced that in absence of other reliable evidence, such as sale instance, earlier awards of similarly situated lands,and the opinion of expert, the only alternative left was to resort to yield method to determine the market value of the acquired lands. The Reference court placed reliance on the judgment of the Apex Court in the case of STATE OF GUJARAT AND OTHERS vs. RAMA RANA AND OTHERS, reported in AIR 1997 SC 1845, in determining market value of the acquired land on yield basis. Reference Court concluded that the claimants were getting net agricultural income of Rs. 93,100/- per hectare equivalent to Rs.931/- per Are. The Reference Court awarded compensation for the fruit bearing trees at the rate of Rs. 8,000/- per mango tree and other fruit bearing trees, e.g. chicoo, raven, coconut, etc. at the rate of Rs. 4000/- to 7,000 per tree. The Reference Court awarded Rs. 1200 per Timber tree and for small fruit bearing trees at the rate of Rs.2,000/- per tree. The Reference Court concluded that the place which was occupied by each fruit bearing tree was 50 sq.meter. The Reference Court, therefore, deducted the area occupied by the fruit bearing tree from the total area of acquired lands. In the ultimate analysis, the Reference Court deduced that the claimants were entitled to get compensation at the rate of Rs. 14,896/- per Bigha i.e. Rs. 931/- per Are for irrigated land and Rs. 11,172/per Bigha i.e. Rs.698/- per Are for non-irrigated land, which has given rise to the filing of these First Appeals by the Appellants.

10. Learned Government Counsel Mr. P.G. Desai assisted by learned AGP Mr. R.C. Kodekar has taken us through the entire evidence produced before the Reference Court. It is submitted by the learned counsel for the Appellant that when the documentary evidence in the nature of sale deed, which was comparable and of the same village was available on the record of the case, the Reference Court erred in resorting to the yield method for the determination of the market value of the acquired lands. Learned counsel for the appellants pleaded that

the market value for the acquired lands was highly excessive, which was arrived at without there being any basis for the same. Learned counsel for the appellants further pleaded that sale deed - Exh. 138 was in respect of part of acquired lands survey No.105 and, therefore, the Reference Court ought to have placed reliance on the said sale deed for the determination of the market value of the acquired lands. Learned counsel for the appellants submitted that the sale deed Exh. 138 was executed in the year 1991 and was covering a small area as compared to large area of land acquired and hence suitable deduction shall have to be given for arriving at the correct market value of the acquired lands. Learned counsel for the appellants submitted that the acquired lands were situated in a remote village where no development had taken place and the market value determined by the Reference Court was highly excessive, and therefore, these Appeals be allowed.

11. Learned counsel for the respondents - claimants vehemently submitted that the acquired lands were having high fertility wherein mangoes and other fruit bearing trees were grown and the claimants were getting fairly high income and, therefore, the Reference Court had not erred in awarding compensation at the rate of Rs. 931/per Are for irrigated lands and Rs. 698/- per Are for non-irrigated lands. Learned counsel for the respondents - claimants submitted that when the Reference Court discarded the said deed - Exh. 138 the only evidence which was available before the Reference Court, for the determination of the market value of the acquired lands was yield method and the respondents had led sufficient evidence to prove that they were raising three crops and getting good income from sale of agricultural produces and fruit bearing trees. Learned counsel for the respondents, therefore, submitted that just and reasonable compensation has been awarded to the respondents for their acquired lands and therefore the appeals be dismissed with costs.

12. The submission of the learned counsel for the appellants that when reliable evidence in the form of sale deed was available on the record, the Reference Court erred in resorting to yield method to determine the market value of the acquired lands, deserves to be accepted. The Supreme Court in the case of SPECIAL DEPUTY COLLECTOR vs. KURRA SAMBASIVA RAO, reported in AIR 1997 SC 2625 has ruled in para-8 at page 2628 that the best evidence of the value of property are the sale transaction in respect of the acquired land to which the claimant himself is a party; the time at which the

property comes to be sold; the purpose for which it is sold; nature of the consideration; and the manner in which the transaction came to be brought out. They are all relevant factors. In the absence of such a sale deed relating to the acquired land, the sale transaction relating to the neighboring lands in the vicinity of the acquired land can be relied on for determining the market value of the acquired lands.

13. Sale deed - Exh. 138 came to be executed on April 19, 1991 with respect to part of acquired lands of Survey No. 105 of village Sarsai. Sale deed - Exh. 138 was proved by witness Jagubhai Bhimbhai Vala - Exh. 137. The witness deposed that an agreement to sale was arrived at between him and the vendor in December 1985 with regard to the sale of agricultural land admeasuring 1 acre and 36 gunthas for a consideration of Rs. 53,130. He also deposed that earnest money of Rs.10,000/- was paid to vendor. It may be stated that the rest of the lands of survey No.105 were acquired under the present acquisition. Therefore, in our view, said sale deed Exh. 138 in all respects can be said to be relevant and comparable to determine the market value of the acquired lands. Therefore, we are of the opinion that the Reference court erred in not placing reliance on sale deed - Exh. 138 and erred in discarding it that it was not a genuine sale entered into by real buyer and real purchaser.

14. In SPECIAL LAND ACQUISITION OFFICER vs. P. VEERABHADRAPPA, reported in AIR 1984 SC 774, the Supreme Court laid down the principle when "Yield Method" or "Method of Capitalising Return" can be applied in evaluating the market value of the acquired lands and the Apex Court ruled as under :

" The function of the Court is awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) and the methods of valuation may be : (1) Opinion of experts; (2) The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) A number of years' purchase of the actual or immediately prospective profits of the Lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should

> not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available."

15. In view of the principle laid down by the Supreme Court in P. Veerabhadarappa's case (supra), in our opinion, when evidence in the nature of sale deed was available, which was reliable and comparable, the Reference Court ought not have resorted to yield method for the determination of the market value of the acquired agricultural lands.

16. In the present acquisition, agricultural lands covering large area of 47 hectares came to be acquired for the purpose of Dhrafad Irrigation Scheme. Sale deed Exh. 138 covers smaller area comprising of 1 acres and 38 gunthas, as compared to large area of agricultural lands. When no sale of comparable land covering large area of land was available, even land transactions in respect of a smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a lay out, lump sum payment as also the waiting period required for selling the sites that would be formed.

17. Learned counsel for the respondents further submitted that around the acquired lands, no development had taken place and, therefore, no deduction should be made for the development of the large extent of land, which is indicated in several decisions of the Supreme Court and this High Court. However, learned counsel for the respondents submitted that when the court relies on sale deed covering small area for the determination of the market value of large extent of area, some reasonable deduction can be given to the price under sale deed in respect of smaller area. The submission of the learned counsel for the respondents deserves consideration. The record of this case indicates that the acquired lands were situated not in developing area or fully developed area. No evidence was brought on the record that there was development in the surrounding area of the acquired lands. No sale transaction had taken place in the adjoining area of the acquired lands. All the lands were agricultural lands and they did not possess building potentiality. Sale deed - Exh. 138 was executed on April 19, 1991. Witness - Jagubhai Bhimbhai - Exh. 137

who was the purchaser of the land of survey No. 105/1 had deposed that the agreement to sale was arrived at in December 1985 and the rate was fixed of the agricultural lands under sale deed - Exh. 138 at the rate of Rs.700/per Are. Though the agreement to sale which was executed in December 1985 was not produced, but we cannot discard the oral evidence of witness Jagubhai Bhimbhai Vala Exh.137, when he deposed that he had agreed to purchase the land covering sale deed Exh.138 at the rate of Rs. 700/- per Are in December 1985. The Notification under Section 4(1) of the Act was published on June 17, 1987. Therefore, there was a gap of nearly one and half year between the issuance of the notification under Sec. 4(1) of the Act and the price agreed between the vendor and vendee covering the land of survey No.105/1 in December, 1985. Because of the large area having acquired for the irrigation scheme, there must have been some pressure on the agricultural lands of village Sarsai. It is a matter of common knowledge that prices of land, either which is agricultural or nonagricultural, rises every year. As stated earlier, because of the present acquisition, where large area of lands were acquired, the prices of the agricultural lands must have gone high because of heavy pressure on the lands surrounding the acquired lands. The court can take judicial notice of rise of price of land and can give a reasonable rise every year. In the facts and circumstances emerging from the record of this case, it would be reasonable to give rise of price at 10% every year to the price agreed of the agricultural lands covering sale deed Exh.138. As stated earlier, the price of Rs.700/- per Are was agreed between the vendor and vendee for the lands under sale deed - Exh.138 in December 1985. The evidence of claimants' - witness Jagubhai Bhimbhai Vala - Exh.137 had gone unchallenged in the cross-examination to the effect that the price of the lands was agreed in the month of December, 1985. Applying the rise of price at 10% every year, in our opinion, the market value of the acquired lands as on June, 17, 1987 would be around Rs.840 per Are. Even if we give rise of price of 10% every year, because of a gap of one and half year, the price as on June 17, 1987 can be taken at the rate of Rs.840/- per Are (i.e. Rs.700 x 140 (10% rise of price for 2 years = Rs.840).

18. In the present acquisition, large area covering 47 hectares came to be acquired for the public purpose of Dhrafad Irrigation Scheme. Sale deed - Exh.138 covers a smaller area of 1 acre and 38 gunthas. It is well recognised principle of valuation of lands not to value large areas of land on the basis of sales of small areas

without making suitable deductions from sale price of small plots of land. But neither the valuer nor the court would be justified in rejecting the sale instance of a small plot as one that is not a comparable sale instance only on the ground of difference in size, and a large plot of land may, in a given case, justly be valued on the basis of the sale instance of a small plot of land after making suitable deductions and allowances from the sale price of the small plot of land on account of the largeness of the size of the land sought to be evaluated. Ordinarily, a large tract of land cannot be valued on the same basis as a small plot of land. The reasons therefore are obvious. The number of intending purchasers competing for the purchase of a small plot would be far greater than that for a large plot, with the result that the seller of a small plot is likely to obtain a comparatively higher price than the seller of a big plot of land. Furthermore, when a small plot is purchased may not be very carefully or properly scrutinized, the whole cost of purchase being small. (See: AIR 1991 Guj. 187).

19. However, learned counsel for the respondents has vehemently submitted that there was no development in the surrounding area of the acquired lands and there was no likelihood of the sale of the agricultural lands of village Sarsai. It is submitted that there would not be any justification to deduct any amount towards development charges covering large area of land. In our opinion, the submission of the learned counsel for the respondents - claimants cannot be acceded to in the absence of reliable evidence produced by them. The only alternative available to the court is to remand the Appeals to the Trial Court to determine the compensation afresh after affording opportunity to the parties. One fact cannot be ignored that the present lands were acquired in the year 1987 and that the parties may not be having evidence after a lapse of 12 to 13 years of the issuance of the Notification under Sec. 4(1) of the Act. Learned counsel for the respondents has also stated that whatever evidence is available on the record the Appeals should be decided and the court can also place reliance on the said deed - Exh.38, which was the best piece of evidence to determine the market value of the acquired lands. Therefore, we have not thought it fit to remand the matter to the Reference Court and have taken into consideration - sale deed - Exh.138 for the evaluation of the market price of the acquired lands. In the case of ASHWINKUMAR K. PATEL vs. UPENDRA J. PATEL AND OTHERS, reported in (1999) 3 SCC 161, the Supreme Court ruled that the High Court should not ordinarily remand a case

under Order 41 Rule 23 CPC to the lower court merely because it considers that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have left decided the appeal one way or the other. It could have considered the various aspects of the case mentioned in the order of the trial court and considered whether the order of the trial court ought to be confirmed or reversed or modified. Following the principle laid down by the Apex Court in Ashwinkumar K. Patel (supra), we have thought it fit not to remand the matter to the Reference Court for determination of the market value of the acquired lands, even though the approach of the Reference Court in resorting to the yield method and awarding separate compensation for the fruit bearing trees is unwarranted and against the principle of settled law.

20. The Supreme Court in the case of LAND ACQUISITION OFFICER, CHITTOOR vs. L. KAMALAMMA, reported in AIR 1998 SC 781, also reiterated the principle that when no sales of comparable land was available where large chunks of land had been sold even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of lay out, lump sum payment as also the waiting period required for selling the sites that would be formed. The Apex Court in the above said decision ruled that the market price fixed by relying on such sale transaction covering smaller area has to be reduced by 40% in evaluating the market price of the land covering large area. However, in our opinion, bearing in mind, the facts and circumstances of the case and the fact that there was no fast development surrounding the acquired lands, it would be appropriate and reasonable to deduct 30% of the market price of land covering smaller area as reflected in the year 1987 on the basis of the market price as was found under sale deed Exh. 138. If deduction of 30% is given to the amount of Rs.840, the market price of lands covering large area i.e. the lands of present acquisition, would be Rs. 590 per Are. Admittedly, lands of survey No. 105 were bagayat lands i.e. irrigated lands, wherein well was situated and the owner - agriculturist was raising crops and fruit bearing trees by using water of the said well. Therefore, in our opinion, the market value of the irrigated land would would Rs.590/- per Are from the relevant date i.e. on

June 17, 1987. It is well recognised principle that evaluating the non-irrigated lands 25 to 30% deduction should be given to the value arrived at for the irrigated lands. If 30% deduction is given to the market value of the acquired lands of irrigated lands, then the market value of the non-irrigated lands on the relevant date would be Rs. 472/per Are. Therefore, the award of the Reference Court awarding compensation of the acquired irrigated lands at Rs.931 per Are requires to be reduced to Rs. 590 per Are and the market value determined by the Reference Court in respect of non-irrigated acquired lands at the rate of Rs.698 per Are, requires to be reduced to Rs.472/- per Are. Therefore, the award of the Reference Court shall have to be modified to the above extent. We may state here that the method adopted by the Reference Court in deducting area of 50 Sq. meter with regard to the area covered by fruit bearing trees requires to be deprecated. While evaluating land either bagayat or irrigated, the court ought not to have resorted to such method. Therefore, the method adopted by the Reference Court in carving out the area covered by each tree of 50 sq. meter is required to be set aside and the irrigated land would be evaluated as a whole without excluding the area covered by the fruit bearing trees.

21. The claimants shall not be entitled to the value of the fruit bearing trees as held by the Supreme Court in the case of KOYAPPATHODI M. AYISHA UMMA vs. STATE OF KERALA, reported in AIR 1991 SC 2027, wherein it is ruled that "the methods of valuation to be adopted in ascertaining the market value of the property, namely, land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the Court either to assess the lands with all its advantage as potential value and fix the market value thereof or where there is reliable and acceptable evidence available on record of the annual income of the fruit bearing trees, the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. (emphasis supplied). In the former case, the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land."

22. In view of the above pronouncement of the Supreme Court in Koyappathod M. Ayisha Umma (supra), in our opinion, the compensation awarded by the Reference Court with regard to fruit bearing trees separately deserves to

be quashed and set aside. The claimants would be entitled to the lands to be assessed as irrigated lands and the fruit bearing trees shall be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land as per G.R.No.LAQ-2278/3816-GHA dt. 16.5.1985.

23. For the foregoing discussion, these First Appeals filed by the State of Gujarat are partly allowed to. The common judgment and award of the Reference Court is partly modified and it is hereby held that the claimants - respondents would be entitled to get compensation for their irrigated lands at the rate of Rs.590/- per Are instead of Rs.931 awarded by the Reference Court and Rs.472/- per Area for non-irrigated lands instead of Rs. 698/- awarded by the Reference Court. It is further held that the compensation for fruit bearing trees and other trees awarded separately by the Reference Court is set aside and the trees shall be valued as timber as per G.R. No. LAQ-2278/3816 - GHA dt.16.5.1985. The claimants

respondents shall also be entitled to statutory benefits on the amount of compensation as per Sec. 23(1-A), 23(2) and under Section 28 of the Act. Office is directed to draw decree in terms of this judgment.

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